

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RICHARD POLAK,

Plaintiff,

vs.

KERRY ISELIN, ROBERT LANEY, and
CLINTON GORMLEY,

Defendants.

8:18CV358

ORDER

On January 9, 2020, Defendants filed a Motion to Compel and Motion for Sanctions against Plaintiff and his counsel, William Harris (“Mr. Harris”). ([Filing No. 57.](#)) Neither Plaintiff nor his counsel responded to the motion.

DISCUSSION

On October 18, 2019, the Court held a telephone conference with counsel for the parties to discuss a discovery dispute. (Filing No. 47.) The Court ordered Plaintiff to produce medical records and directed the parties to meet and confer regarding the scheduling of Plaintiff’s deposition. (Filing No. 48.) Counsel subsequently agreed that the deposition would be held on November 13, 2019.

On November 8, 2019, Assistant U.S. Attorney Lynnett Wagner (“Ms. Wagner”), who is counsel for Defendant Robert Laney, contacted Mr. Harris to confirm Plaintiff’s deposition. Mr. Harris confirmed the deposition by email. However, Plaintiff did not appear for the deposition. Mr. Harris arrived at the deposition and advised that he had been unable to reach his client. On

November 23, 2019, Ms. Wagner received an invoice from the court reporter for costs incurred for that deposition in the amount of \$168.75.

On November 25, 2019, following Plaintiff's failure to appear for the deposition, the Court ordered Plaintiff to appear for a deposition. (Filing No. 54.) The Court stated that if Plaintiff failed to appear for that deposition, Defendants could file a motion to compel. The deposition was scheduled for December 19, 2019.

On December 17, 2019, Ms. Wagner sent Mr. Harris an email to confirm that Plaintiff would appear for the deposition. Mr. Harris did not respond to the email. Ms. Wagner called Mr. Harris on December 18, 2019 to discuss whether Plaintiff would appear for the deposition. Mr. Harris advised that he had been unable to reach Plaintiff. Ms. Wagner then cancelled the court reporter. Plaintiff did not appear for the December 19, 2019 deposition.

Due to Plaintiff's repeated failure to attend scheduled depositions, Defendants seek an order compelling Plaintiff and Mr. Harris to show cause why this case should not be dismissed with prejudice for failure to prosecute. Defendants also seek a sanction in the amount of \$168.75 to compensate Defendants for court reporter's fees incurred when Plaintiff failed to attend his November 13, 2019 deposition.

Having considered the matter,

IT IS ORDERED:

1. Defendants' Motion to Compel and Motion for Sanctions ([Filing No. 57](#)) is granted, in part.
2. By February 12, 2020, Plaintiff and his counsel, Mr. Harris, shall show cause by written affidavit why this case should not be dismissed *with prejudice* for failure to prosecute.
3. By February 12, 2020, Plaintiff and his counsel shall also show cause by written affidavit why monetary sanctions should not be imposed to compensate Defendant for the court reporter's fees and transcript which were incurred when Plaintiff failed to attend his November 13, 2019 deposition.

4. Failure to comply with this Order will result in a recommendation that this case be dismissed *with prejudice* for failure to prosecute. Failure to comply will also result in the imposition of a monetary sanction in the amount of \$168.75.

Dated this 29th day of January, 2020.

BY THE COURT:

s/ Susan M. Bazis
United States Magistrate Judge